

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

PASQUALE NIGRO,

Petitioner,

2:05-cv-0712-GEB-CHS-P

VS.

M. EVANS,

### Respondent.

## ORDER

Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of this court's January 21, 2009 denial of his application for a writ of habeas corpus. Before petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The certificate of appealability must “indicate which specific issue or issues satisfy” the requirement. 28 U.S.C. § 2253(c)(3).

A certificate of appealability should be granted for any issue that petitioner can demonstrate is ““debatable among jurists of reason,”” could be resolved differently by a different

1 court, or is “adequate to deserve encouragement to proceed further.” Jennings v. Woodford,  
2 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).<sup>1</sup>

3 After review of the record petitioner has made a substantial showing of the denial  
4 of a constitutional right.

5 Accordingly, IT IS HEREBY ORDERED that a certificate of appealability is  
6 issued in the present action.

7 Dated: February 9, 2009

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10 GARLAND E. BURRELL, JR.  
United States District Judge

25 <sup>1</sup> Except for the requirement that appealable issues be specifically identified, the standard  
26 for issuance of a certificate of appealability is the same as the standard that applied to issuance of  
a certificate of probable cause. Jennings, at 1010.